> security for the debt; The debt is the principal; the estate is the accident."

and by his sanction to mortgage, Sproule, J. must have impliedly authorised a personal covenant to repay. He uses the word mortgage, not for example pledge. The reconveyance of the mortgaged properties by Lim Chin Guan immediately before the execution of the mortgage of the 8th May sufficed to clear Cheah Hee Nyan of liability; and this instrument was necessary if the mortgage was to be carried out in pursuance of the order of Court. The mortgage deed must contain a covenant to repay, and that covenant must be made by Cheah Lean Guan either personally or as trustee of the estate of Cheah Choon Seng. Moreover it is unreasonable to suppose that Sproule, J. intended that the estate of Cheah Choon Seng should not be bound to repay the principal. It was never Cheah Lean Guan's debt, and he was acting all the time in the interest of the estate; and if Sproule, J. had intended not to bind the estate, he could have approved the transfer proposed and left Cheah Hee Nyan bound. This suffices, I think, to distinguish *Farhall* v. *Farhall*, 7 Ch. App. 123, upon which Mr. Ross relied strongly, because here the trustee had the sanction of the Court to enter into the specific bargain which he afterwards made, whereas in *Farhall* v. *Farhall* the will gave the executor "a power to charge his real estate in aid of his personal estate." The two cases seem to me quite different.

Now the covenant to repay is not express but implied; and I think that this implied covenant must be deemed to be in consonance with the rest of the document and therefore as trustee.

Paragraph 4 of this document has caused me some difficulty; but I think the intention is to bind the estate though it does not necessarily of itself exclude the personal liability of Cheah Lean Guan.

The document of 10th May, 1924 which transfers the mortgage is drawn on the same lines as the mortgage of the 8th May, and is to be interpreted on the same principles.

The case of *Watling* v. *Lewis*, (1911) 1 Ch. 414, was pressed upon us as governing this case; but at p. 422, Warrington, J. says:—

> "On the other hand it was pointed out in *Williams* v. *Hathaway* that there is no objection in law to a proviso limiting the liability of the covenantor provided it really limited it without destroying it; if it really limits the liability either in point of time or by specifying the particular fund out of which alone the payment has to be made, that may be perfectly good."

and later he asks:

> "Which of the two cases is this? Do the words of this covenant purport to limit the liability of the defendants or destroy it altogether?"

But the argument of Warrington, J. appears to be that the words "but not so as to create any personal liability" destroy the personal covenant, while the words "as trustees" do not suffice to attach the liability to the trust estate. He holds that these words purport to destroy the liability altogether. But this is at best an interpretation of a specific document and the statement of Warrington, J., when he says:

> "Those words 'as such trustees' again, in my view, in a covenant of this kind, have no effect at all. A covenant by a person 'as trustee' does not render his trust estate liable, it is a covenant by himself."

are in direct contradiction to the words of Buckley, L.J. in *Robinson's Settlement*, (1912) 1 Ch. who says: at p.729;

> "This covenant as trustee was I think not a covenant which bound Stevens personally; it was a covenant which bound only the two trustees in respect of the trust fund in their hands at the date of the issue of the writ."

There is no intention in our case to destroy any liability, because I think that they suffice to attach liability to the estate, and it does not even follow that though Cheah Lean Guan has succeeded in attaching liability to the estate, he has succeeded in excluding his own personal liability.

I think therefore that the decision of Whitley, J. was right and I agree with the order proposed by the learned Chief Justice.

Appeal Dismissed.

Solicitors for Appellant (Defendant)—*Huck Lim & Hock Soo.*

Solicitors for Respondent (Plaintiff)—*Hogan, Adams & Allan.*

[APPELLATE CRIMINAL JURISDICTION]

BUCKNILL, C.J., EBDEN & SPROULE, JJ.

November 25, 1916.

H. NUNES v. SONG KEE CHUAN

[SINGAPORE MAGISTRATES APPEAL No. 36 of 1916]

Municipal Ordinance 1913, S. 226—Nuisance—Abatement—Closing order.

Under S. 226 of the Municipal Ordinance 1913 it is not open to a Municipality to order the removal of the inhabitants of a dwelling house as a means of abating a nuisance, when such nuisance is due solely to a faulty construction of the house which is irremediable.

When owing to structural defects a house dependent upon and connected with other houses of a similarly faulty character is regarded as unfit for human habita-

tion, it is not open to the Municipality to attempt to deal with it separately and individually under the provisions of the Municipal Ordinance relating to the abatement of nuisances.

Magistrate's Appeal.

This case being of unusual importance was heard before a Court consisting of Sir John Bucknill, C.J., Ebden and Sproule JJ.

Greenfield & Johannes for Appellant.

Robinson for Respondent (a Singapore Municipal Sanitary Inspector acting for and on behalf of the Singapore Municipal Commissioners.)

Cur. Ad. Vult.

The Judgment of the Court was delivered by Sir John Bucknill C.J.

BUCKNILL, C.J.—This was an appeal from a decision of the Magistrate Mr. W. L. Carter dated the 19th of July by which he prohibited as from the 5th of September 1916 the use of a certain dwelling house for human habitation.

The matter arose in this way: on the 1st of March 1916 the Municipal Health Officer of Singapore caused a notice to be served upon the owner of No. 5-F Lim Eng Bee Lane purporting to be issued under the provisions of Section 226 of the Municipal Ordinance 1913.

This notice reads as follows:—

"830

H. 0/14.

Municipality of Singapore

Notice requiring abatement of nuisance under section 226 of Ordinance VIII of 1913

"A"

To

402/1916 sd. L.C.

"The owner.

6.6.1916.

Take notice that under the provisions of the Municipal Ordinance 1913, the Commissioners being satisfied of the existence at 5-F Lim Eng Bee Lane of a nuisance being premises in such a state as to be a nuisance or injurious to health, do hereby require you within 14 days from the service of this notice to abate the same and for that purpose to remove the occupants and cease to use as a human dwelling.

"If you make default in complying with the requisitions of this notice a summons will be issued requiring your attendance before the Police Court to answer a complaint which will be made for the purpose of enforcing the abatement of the said nuisance and for recovering the costs and penalties that may be incurred thereby.

Dated this 1st day of March 1916.

"Sd. W.R.C. Middleton.
"Municipal Health Officer.

"Municipal Health Office,
Singapore

How served
When served
By whom served

sd. H.V. 11.3.16"

As the notice was not complied with the Municipality applied to the Police Court under the provisions of section 227 of the Municipal Ordinance for an *abatement* order (see & read page 23 of record); the Magistrate as before stated made a *closing* order in the terms mentioned above.

It is from this order that the owner of the property is appealing.

The dwelling house in question is one of a large block of houses which appear with the sanction of the Municipality to have been allowed to be erected in 1902. It was argued that as the Municipality had thus passed the plans for and allowed the building of these premises in 1902 it was not open to the Municipality in view of the fact that there had been no constructional change in the building in question or in the block of which it forms a part, now to declare that the premises were a nuisance and/or injurious to health simply on the ground that according to the more modern views which now obtain the methods of construction which the Municipality fully sanctioned in 1902 are contrary to the later ideas of the principles of sanitation and hygiene. I do not however consider that there is in law any such estoppel.

The only evidence of serious importance before the Magistrate was that of the extremely experienced Municipal Health Officer, Dr. Middleton.

It appears clearly from his evidence that he considers that this house and the whole block are constructed on insanitary principles and that nothing can possibly be done by any re-construction of the house which would render it in his opinion fit for human habitation.

I have seen the premises and I can have very little doubt but that the learned doctor is quite correct.

In order to ascertain whether the action of the Municipality has been correct it is necessary to see what are the powers which the Municipality possess in dealing with insanitary dwellings.

These powers are very varied.

In the first place under Section 217 it is provided that when the Health Officer has certified in writing that in his opinion any building used or occupied as a dwelling is unfit for human habitation and cannot be rendered fit therefor without the execution of such alterations or structural operations as he may specify the Municipal Commissioners may by notice in writing require the owner to carry into effect the execution of such operations or structural alterations as may be necessary to render the premises fit for human habitation and to guard against disease; and the Commissioners may also require the inhabitants to cease to inhabit the building.

The application of this section is obviously adaptable to many cases which one could formulate but not to the present case in which it is the view of the Health Officer that it is impossible by any alterations or reconstruction of this house to render it fit for human occupation.

Next there is section 304 under the provisions of which when a representation is made to the Commissioners by the Health Officer that within a specified area within the Municipality any houses are unfit for human habitation the matter should be considered by the Commissioners who may if satisfied of the correctness of their Health Officer's representation, of the sufficiency of their resources, that the area is an unhealthy area and that an improvement scheme ought to be made shall forthwith proceed to make a scheme for the improvement of the area in question.

It is unnecessary to go into detail as to the method in which a scheme of this character is carried through but it is sufficient to say that it is quite obvious and admitted by counsel for the Municipality that the provisions of this section are eminently adaptable to the present case.

Then again there is section 137 which deals with the laying out of back lanes at the back of houses and here again without going into the details of the way in which the laying out of back lanes is capable of being proceeded with it is part of the evidence of Dr. Middleton and again admitted at the Bar by Counsel for the Municipality that a scheme of back lanes could be applied in the case of the blocks of houses of which the individual house in question is one of one.

The Municipality however has preferred to endeavour to deal with this single house (which is no worse than others in the block) under the provisions of section 226 of the Municipal Ordinance which deals with nuisance.

It is necessary therefore closely to examine the relevant sections of the Ordinance to ascertain if this can properly be done.

Now under section 224 it is laid down that it is the duty of the Commissioners to take steps to remove, put down and abate all nuisances of a public nature within the Municipality on public or private premises which may tend to injure the health of the inhabitants at large and to proceed at law against any person committing any such nuisance for the abatement thereof.

Nuisance is defined in Section 3 as "any act, omission or thing occasioning or likely to occasion injury, annoyance, offence, harm, danger or damage to the sense of sight, smell or hearing or which is or is likely to be injurious or dangerous to health or property."

Certain nuisances however are alone defined as nuisances which can be dealt with summarily; these are referred to in section 225 and the first and only material definition here is "Any premises of such a construction or in such a state as to be a nuisance or injurious or dangerous to health."

By section 226 it is laid down that on the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily the Commissioners shall if satisfied of the existence of a nuisance serve a notice on the person by whose act, default or sufferance the nuisance arises or continues or if such person cannot be found on the occupier or owner of the premises on which the nuisance arises requiring him to abate the same within the time specified in the notice and to execute such works and do such things as may be necessary for that purpose.

In this case the Health Officer gave a notice to the owner informing him that the Commissioners were satisfied of a nuisance namely that the premises were in such a state as to be a nuisance or injurious to health and they called on him to abate the same by removing the occupants and ceasing to use the place as a human dwelling.

Now it seems to me that there are 2 difficulties with regard to the correctness of this notice.

In the first place the notice is in effect a notice to close the premises as a dwelling house, because they are unfit for human habitation.

The nuisance complained of in the notice is that the premises are in such a state as to be a nuisance or injurious to health and it is directed that the nuisance shall be abated by removal of the inhabitants. That is to say it is the human occupancy of the premises which it is in fact the nuisance complained of.

But the removal of the inhabitants does not in any way make the premises in such a state that they are fit for human habitation or in other

words the mere removal of the inhabitants cannot make the premises which are irremediably defective any fitter for human habitation.

It does not appear to me therefore that *under this section* it is open to the Municipality to order the removal of the inhabitants of a dwelling house as a means of abating a nuisance. such nuisance being due solely to a faulty construction of the house which is admittedly irremediable; and which in this case is a construction which it should be parenthetically observed is one to which the Municipality itself gave countenance a few years ago.

To order all the inhabitants to leave the house under this section is to give the Municipality the power which is expressly conferred upon the Police Court under section 227 of the Ordinance which provides that *where there is non-compliance with a nuisance notice* the Commissioners may apply to the Police Court for a nuisance order; such nuisance order *may* be a closing order prohibiting a dwelling house from being used for human habitation but is only to be made when it is proved to the satisfaction of a Police Court that by reason of a nuisance such dwelling house is unfit for human habitation. The fact is that in their proper construction all provisions of this part of the Municipal Ordinance which deal with nuisances capable of being summarily dealt with contemplate only nuisances which are capable of abatement by the person charged and where as in this case the position is that owing to structural defects a house dependent upon and connected with other houses of similarly faulty character is regarded as unfit for human habitation and is on that account irremediably defective it does not appear to me that it is open to the Municipality to attempt to deal with it separately and individually under the provisions of that part of the Ordinance which relates to the abatement of nuisances.

When one formulates this proposition one is at once faced with this question: what is the Municipality then to do if it is desired to deal with a single house which is constructionally irremediably insanitary and consequently injurious to health.

If a single house is in no way dependent for its defects upon other houses it is difficult to conceive a case in which it would not be possible effectively to render it fit for human habitation and it could therefore be dealt with under section 217.

But if the house is dependent for its defects upon one or more other houses and the irremediably faulty circumstances of its structure are interwoven with the presence and I might add of the also faulty construction of those other houses it appears to me to deal with such cases the Municipality must perforce adopt one of those other courses which I have indicated above.

The reason is this: It is not really possible to disassociate the irremediably defective structure of the one house from the composite structure of the block or of the other house or houses; the fault and the nuisance do not lie alone with the one house but conjointly with the block or other house or houses.

To attempt to deal with one alone or with each singly is to endeavour to place upon each the burden not only of its own defects but of the combined defects occasioned by the presence of the other adjacent houses.

When as in a case such as this the construction not only of this house but of the block and of each house in the block is faulty but was approved by the Municipality comparatively recently it would be still more manifestly contrary to the spirit of the Municipal Ordinance that the matter could be dealt with under those sections which relate to the abatement of nuisances.

The appeal must therefore be allowed.

Appeal allowed.

Solicitor for (Appellant)—*M. C. Johannes.*

Solicitors for (Respondent)—*Drew & Napier.*

[ORIGINAL CIVIL JURISDICTION]

SHAW, C.J.

May 24, 1922.

ABRAHAM FRANKEL

v.

CHAIRMAN OF SINGAPORE RURAL BOARD

[SINGAPORE RATING APPEAL No. 8 of 1922]

Ordinance No. 135 (Municipal) S. 3—Definition of Annual Value—land "suitable for building purposes or capable of being developed for such purposes."

In S. 3 of Ordinance No. 135 (Municipal) and the definition of Annual Value therein contained, the words "suitable for building purposes or capable of being developed for such purposes" if taken in their fullest sense would embrace practically all land in the Colony not covered with water and so extensive a meaning cannot properly be given to them.

The expression probably means land suitable for building on or development as a fair commercial speculation in this sense that if put up for sale in small lots, purchasers would be found for it who would buy with a view to either building on it at once themselves or to selling at a profit to others who would.

Rating Appeal.

Page for Appellant.

Langley (Solicitor-General) for Respondent.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.